

FIRST REGULAR SESSION

SENATE BILL NO. 464

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time February 24, 2009, and ordered printed.

2158S.01I

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, and to enact in lieu thereof eleven new sections relating to insurance producers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 374.456, 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.031, 384.043, 384.051, 384.057, and 384.062, RSMo, are repealed and eleven new sections enacted in lieu thereof, to be known as sections 375.020, 382.400, 382.402, 382.405, 382.407, 382.409, 384.025, 384.043, 384.051, 384.057, and 384.062, to read as follows:

375.020. 1. Beginning January 1, 2008, each insurance producer, unless exempt pursuant to section 375.016, licensed to sell insurance in this state shall successfully complete courses of study as required by this section. Any person licensed to act as an insurance producer shall, during each two years, attend courses or programs of instruction or attend seminars equivalent to a minimum of sixteen hours of instruction. Of the sixteen hours' training required in this subsection, the hours need not be divided equally among the lines of authority in which the producer has qualified. The courses or programs attended by the producer during each two-year period shall include instruction on Missouri law, products offered in any line of authority in which the producer is qualified, producers' duties and obligations to the department, and business ethics, including sales suitability. Course credit shall be given to members of the

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 general assembly as determined by the department.

18 2. Subject to approval by the director, the courses or
19 programs of instruction which shall be deemed to meet the
20 director's standards for continuing educational requirements
21 shall include, but not be limited to, the following:

22 (1) American College Courses (CLU, ChFC);

23 (2) Life Underwriters Training Council (LUTC);

24 (3) Certified Insurance Counselor (CIC);

25 (4) Chartered Property and Casualty Underwriter (CPCU);

26 (5) Insurance Institute of America (IIA);

27 (6) Any other professional financial designation
28 approved by the director by rule;

29 (7) An insurance-related course taught by an accredited
30 college or university or qualified instructor who has taught
31 a course of insurance law at such institution;

32 (8) A course or program of instruction or seminar
33 developed or sponsored by any authorized insurer, recognized
34 producer association or insurance trade association, **or any**
35 **other entity engaged in the business of providing education**
36 **courses to producers.** A local producer group may also be
37 approved if the instructor receives no compensation for
38 services.

39 3. A person teaching any approved course of instruction
40 or lecturing at any approved seminar shall qualify for the
41 same number of classroom hours as would be granted to a
42 person taking and successfully completing such course, seminar
43 or program.

44 4. Excess hours accumulated during any two-year period
45 may be carried forward to the two-year period immediately
46 following the two-year period in which the course, program or
47 seminar was held.

48 5. For good cause shown, the director may grant an
49 extension of time during which the educational requirements
50 imposed by this section may be completed, but such extension
51 of time shall not exceed the period of one calendar year.
52 The director may grant an individual waiver of the mandatory
53 continuing education requirement upon a showing by the
54 licensee that it is not feasible for the licensee to satisfy
55 the requirements prior to the renewal date. Waivers may be
56 granted for reasons including, but not limited to:

57 (1) Serious physical injury or illness;

58 (2) Active duty in the armed services for an extended
59 period of time;

60 (3) Residence outside the United States; or

61 (4) The licensee is at least seventy years of age.

62 6. Every person subject to the provisions of this
63 section shall furnish in a form satisfactory to the director,
64 written certification as to the courses, programs or seminars
65 of instruction taken and successfully completed by such
66 person. Every provider of continuing education courses
67 authorized in this state shall, within thirty working days of
68 a licensed producer completing its approved course, provide
69 certification to the director of the completion in a format
70 prescribed by the director.

71 7. The provisions of this section shall not apply to
72 those natural persons holding licenses for any kind or kinds
73 of insurance for which an examination is not required by the
74 law of this state, nor shall they apply to any limited lines
75 insurance producer license or restricted license as the
76 director may exempt.

77 8. The provisions of this section shall not apply to
78 a life insurance producer who is limited by the terms of a
79 written agreement with the insurer to transact only specific
80 life insurance policies having an initial face amount of five
81 thousand dollars or less, or annuities having an initial face
82 amount of ten thousand dollars or less, that are designated
83 by the purchaser for the payment of funeral or burial
84 expenses. The director may require the insurer entering into
85 the written agreements with the insurance producers pursuant
86 to this subsection to certify as to the representations of
87 the insurance producers.

88 9. Rules and regulations necessary to implement and
89 administer this section shall be promulgated by the director,
90 including, but not limited to, rules and regulations
91 regarding the following:

92 (1) Course content and hour credits: the insurance
93 advisory board established by section 375.019 shall be
94 utilized by the director to assist him in determining
95 acceptable content of courses, programs and seminars to
96 include classroom equivalency;

97 (2) Filing fees for course approval: every applicant

98 seeking approval by the director of a continuing education
99 course under this section shall pay to the director a filing
100 fee of fifty dollars per course. Fees shall be waived for
101 state and local insurance producer groups. Such fee shall
102 accompany any application form required by the director.
103 Courses shall be approved for a period of no more than one
104 year. Applicants holding courses intended to be offered for
105 a longer period must reapply for approval. Courses approved
106 by the director prior to August 28, 1993, for which
107 continuous certification is sought should be resubmitted for
108 approval sixty days before the anniversary date of the
109 previous approval.

110 10. All funds received pursuant to the provisions of
111 this section shall be transmitted by the director to the
112 department of revenue for deposit in the state treasury to
113 the credit of the insurance dedicated fund. All expenditures
114 necessitated by this section shall be paid from funds
115 appropriated from the insurance dedicated fund by the
116 legislature.

382.400. As used in sections 382.400 to [382.410]
2 **382.409**, the following terms mean:

3 (1) "Accredited state", a state in which the insurance
4 department or regulatory agency has qualified as meeting the
5 minimum financial regulatory standards promulgated and
6 established from time to time by the National Association of
7 Insurance Commissioners;

8 (2) ["Broker", an insurance broker or brokers as
9 defined in section 375.012, RSMo;

10 (3)] "Control" or "controlled" has the meaning
11 prescribed by section 382.010;

12 [(4)] (3) "Controlled insurer", a licensed insurer
13 which is controlled, directly or indirectly, by a [broker]
14 **producer**;

15 [(5)] (4) "Controlling [broker] **producer**", a [broker]
16 **producer** who, directly or indirectly, controls an insurer;

17 [(6)] (5) "Licensed insurer" or "insurer", any person,
18 firm, association or corporation duly licensed to transact a
19 property or casualty insurance business in this state. The
20 following are not licensed insurers for the purposes of
21 sections 382.400 to 382.410:

22 (a) All risk retention groups as defined in the federal
23 Superfund Amendments Reauthorization Act of 1986, as amended,
24 and the federal Risk Retention Act, 15 U.S.C. section 3901,
25 et seq., as amended, and sections 375.1080 to 375.1105, RSMo;

26 (b) All residual market pools and joint underwriting
27 authorities or associations; and

28 (c) All captive insurers. For the purposes of sections
29 382.400 to 382.410, "captive insurers" are insurance companies
30 owned by another organization whose exclusive purpose is to
31 insure risks of the parent organization and affiliated
32 companies or, in the case of groups and associations,
33 insurance organizations owned by the insureds whose exclusive
34 purpose is to insure risks to member organizations and group
35 members and their affiliates;

36 (6) **"Producer", an insurance broker or brokers or any**
37 **other person, firm, association, or corporation, when, for**
38 **any compensation, commission, or other thing of value, the**
39 **person, firm, association, or corporation acts or aids in any**
40 **manner in soliciting, negotiating, or procuring the making of**
41 **an insurance contract on behalf of an insured other than the**
42 **person, firm, association, or corporation.**

382.402. Sections 382.400 to [382.410] **382.409** shall
2 apply to licensed insurers either domiciled in this state or
3 domiciled in a state that is not an accredited state having
4 in effect laws substantially similar to the provisions of
5 sections 382.400 to [382.410] **382.409**. All provisions of
6 this chapter, to the extent they are not superseded by
7 sections 382.400 to [382.410] **382.409**, shall continue to
8 apply to all parties within holding company systems subject
9 to sections 382.400 to [382.410] **382.409**.

382.405. 1. (1) The provisions of this section shall
2 apply if in any calendar year the aggregate amount of gross
3 written premium on business placed with a controlled insurer
4 by controlling [broker] **producer** is equal to or greater than
5 five percent of the admitted assets of the controlled
6 insurer, as reported in the controlled insurer's quarterly
7 statement filed as of September thirtieth of the prior year.

8
9 (2) Notwithstanding the provisions of subdivision (1)
10 of this subsection, the provisions of this section shall not

11 apply if:

12 (a) The controlling [broker] **producer**:

13 a. Places insurance only with the controlled insurer,
14 or only with the controlled insurer and a number of members
15 of the controlled insurer's holding company system, or the
16 controlled insurer's parent, affiliate or subsidiary and
17 receives no compensation based upon the amount of premiums
18 written in connection with such insurance; and

19 b. Accepts insurance placements only from nonaffiliated
20 subproducers, and not directly from insureds; and

21 (b) The controlled insurer, except for insurance
22 business written through a residual market facility such as
23 the joint underwriting association prescribed by section
24 303.200, RSMo, accepts insurance business only from a
25 controlling [broker] **producer**, a [broker] **producer** controlled
26 by the controlled insurer, or a [broker] **producer** that is a
27 subsidiary of the controlled insurer.

28 2. A controlled insurer shall not accept business from
29 a controlling [broker] **producer** and a controlling [broker]
30 **producer** shall not place business with a controlled insurer
31 unless there is a written contract between the controlling
32 [broker] **producer** and the insurer specifying the
33 responsibilities of each party, which contract has been
34 approved by the board of directors of the insurer and
35 contains the following minimum provisions:

36 (1) The controlled insurer may terminate the contract
37 for cause, upon written notice to the controlling [broker]
38 **producer**. The controlled insurer shall suspend the authority
39 of the controlling [broker] **producer** to write business during
40 the pendency of any dispute regarding the cause for the
41 termination;

42 (2) The controlling [broker] **producer** shall render
43 accounts to the controlled insurer detailing all material
44 transactions, including information necessary to support all
45 commissions, charges and other fees received by, or owing to,
46 the controlling [broker] **producer**;

47 (3) The controlling [broker] **producer** shall remit all
48 funds due under the terms of the contract to the controlled
49 insurer on at least a monthly basis. The due date shall be
50 fixed so that premiums or installments thereof collected

51 shall be remitted no later than ninety days after the
52 effective date of any policy placed with the controlled
53 insurer under the contract;

54 (4) All funds collected for the controlled insurer's
55 account shall be held by the controlling [broker] **producer** in
56 a fiduciary capacity, in one or more appropriately identified
57 bank accounts in banks that are members of the Federal
58 Reserve System, in accordance with the provisions of
59 applicable insurance law; however, funds of a controlling
60 [broker] **producer** not required to be licensed in this state
61 shall be maintained in compliance with the requirements of
62 the controlling [broker's] **producer's** domiciliary
63 jurisdiction;

64 (5) The controlling [broker] **producer** shall maintain
65 separately identifiable records of business written for the
66 controlled insurer;

67 (6) The contract shall not be assigned in whole or in
68 part by the controlling [broker] **producer**;

69 (7) The controlled insurer shall provide the
70 controlling [broker] **producer** with its underwriting standards,
71 rules and procedures, manuals setting forth the rates to be
72 charged, and the conditions for the acceptance or rejection
73 of risks. The controlling [broker] **producer** shall adhere to
74 the standards, rules, procedures, rates and conditions. The
75 standards, rules, procedures, rates and conditions shall be
76 the same as those applicable to comparable business placed
77 with the controlled insurer by a [broker] **producer** other than
78 the controlling [broker] **producer**;

79 (8) The rates and terms of the controlling [broker's]
80 **producer's** commissions, charges or other fees and the
81 purposes for those charges or fees. The rates of the
82 commissions, charges and other fees shall be no greater than
83 those applicable to comparable business placed with the
84 controlled insurer by [brokers] **producers** other than
85 controlling [brokers] **producers**. For purposes of this
86 subdivision and subdivision (7) of this subsection, examples
87 of comparable business includes the same lines of insurance,
88 same kinds of insurance, same kinds of risks, similar policy
89 limits, and similar quality of business;

90 (9) If the contract provides that the controlling

91 [broker] **producer**, on insurance business placed with the
92 insurer, is to be compensated contingent upon the insurer's
93 profits on that business, then such compensation shall not be
94 determined and paid until at least five years after the
95 premiums on liability insurance are earned and at least one
96 year after the premiums are earned on any other insurance.
97 In no event shall the commissions be paid until the adequacy
98 of the controlled insurer's reserves on remaining claims has
99 been independently verified pursuant to subsection 1 of this
100 section;

101 (10) A limit on the controlling [broker's] **producer's**
102 writings in relation to the controlled insurer's surplus and
103 total writings. The insurer may establish a different limit
104 for each line or subline of business. The controlled insurer
105 shall notify the controlling [broker] **producer** when the
106 applicable limit is approached and shall not accept business
107 from the controlling [broker] **producer** if the limit is
108 reached. The controlling [broker] **producer** shall not place
109 business with the controlled insurer if it has been notified
110 by the controlled insurer that the limit has been reached;
111 and

112 (11) The controlling [broker] **producer** may negotiate
113 but shall not bind reinsurance on behalf of the controlled
114 insurer, except that the controlling [broker] **producer** may
115 bind facultative reinsurance contracts pursuant to obligatory
116 facultative agreements if the contract with the controlled
117 insurer contains underwriting guidelines including, but both
118 reinsurance assumed and ceded, a list of reinsurers with
119 which such automatic agreements are in effect, the coverages
120 and amounts or percentages that may be reinsured and
121 commission schedules.

122 3. Every controlled insurer shall have an audit
123 committee of the board of directors composed of independent
124 directors. The audit committee shall annually meet with
125 management, the insurer's independent certified public
126 accountants, and an independent casualty actuary or other
127 independent loss reserve specialist acceptable to the director
128 to review the adequacy of the insurer's loss reserves.

129 4. (1) In addition to any other required loss reserve
130 certification, the controlled insurer shall annually, on April

131 first of each year, file with the director an opinion of an
132 independent casualty actuary, or such other independent loss
133 reserve specialist acceptable to the director, reporting loss
134 ratios for each line of business written and attesting to the
135 adequacy of loss reserves established for losses incurred and
136 outstanding as of year-end, including incurred but not
137 reported, on business placed by the [broker] **producer**; and

138 (2) The controlled insurer shall annually report to the
139 director the amount of commissions paid to the [broker]
140 **producer**, the percentage such amount represents of the net
141 premiums written and comparable amounts and percentage paid
142 to noncontrolling [brokers] **producers** for placements of the
143 same kinds of insurance.

382.407. The [broker] **producer**, prior to the effective
2 date of the policy, shall deliver written notice to the
3 prospective insured disclosing the relationship between the
4 [broker] **producer** and the controlled insurer, except that if
5 the business is placed through a subproducer who is not a
6 controlling [broker] **producer**, the controlling [broker]
7 **producer** shall retain in his records a signed commitment from
8 the subproducer that the subproducer is aware of the
9 relationship between the insurer and the [broker] **producer**
10 and that the subproducer has or will notify the insured.

382.409. 1. (1) If the director believes that the
2 controlling [broker] **producer** or any other person has not
3 materially complied with sections 382.400 to 382.410, or any
4 regulation or order promulgated hereunder, after notice and
5 opportunity to be heard, the director may order the
6 controlling [broker] **producer** to cease placing business with
7 the controlled insurer; and

8 (2) If it was found that because of such material
9 noncompliance that the controlled insurer or any policyholder
10 thereof has suffered any loss or damage, the director may
11 maintain a civil action or intervene in an action brought by
12 or on behalf of the insurer or policyholder for recovery of
13 compensatory damages for the benefit of the insurer or
14 policyholder or other appropriate relief.

15 2. If an order of liquidation or rehabilitation of the
16 controlled insurer has been entered pursuant to sections
17 375.1150 to 375.1246, RSMo, and the receiver appointed under

18 that order believes that the controlling [broker] **producer** or
19 any other person has not materially complied with sections
20 382.400 to 382.410, or any regulation or order promulgated
21 hereunder, and the insurer suffered any loss or damage
22 therefrom, the receiver may maintain a civil action for
23 recovery of damages or other appropriate sanctions for the
24 benefit of the insurer.

25 3. Nothing contained in this section shall affect the
26 right of the director to impose any other penalties provided
27 for by law.

28 4. Nothing contained in this section is intended to or
29 shall in any manner alter or affect the rights of
30 policyholders, claimants, creditors or other third parties.
31

384.025. 1. If at any time the director has reason to
2 believe that an eligible surplus lines insurer:

- 3 (1) Is in unsound financial condition;
- 4 (2) Is no longer eligible under section 384.021;
- 5 (3) Has willfully violated the laws of this state; or
- 6 (4) Does not make reasonably prompt payment of just
7 losses and claims in this state or elsewhere;
- 8 the director may declare it ineligible.

9 2. The director shall promptly [mail] **publish** notice
10 of all such declarations [to each surplus lines licensee] **in**
11 **any public electronic format.**

384.043. 1. No insurance producer shall procure any
2 contract of surplus lines insurance with any nonadmitted
3 insurer, unless he possesses a current surplus lines
4 insurance license issued by the director.

5 2. The director shall issue a surplus lines license to
6 any qualified holder of a current resident or nonresident
7 property and casualty insurance producer license but only
8 when the licensee has:

- 9 (1) Remitted the one hundred dollar initial fee to the
10 director;
- 11 (2) Submitted a completed license application on a form
12 supplied by the director; and
- 13 (3) Passed a qualifying examination approved by the
14 director, except that all holders of a license prior to July
15 1, 1987, shall be deemed to have passed such an examination.

16

17 3. Each surplus lines license shall be renewed
18 [annually] **for a term of two years** on the **biennial**
19 anniversary date of issuance and continue in effect until
20 refused, revoked or suspended by the director in accordance
21 with section 384.065; except that if the [annual] **biennial**
22 renewal fee for the license is not paid on or before the
23 anniversary date, the license terminates. The [annual]
24 **biennial** renewal fee is [fifty] **one hundred** dollars.

384.051. 1. Every insured in this state who procures
2 or causes to be procured or continues or renews insurance in
3 any surplus lines insurer, or any self-insurer in this state
4 who so procures or continues with, any surplus lines insurer,
5 excess of loss, catastrophe or other insurance, upon a
6 subject of insurance resident, located or to be performed
7 within this state, other than insurance procured through a
8 surplus lines broker pursuant to sections 384.011 to 384.071,
9 shall before March second of the year next succeeding the
10 year in which the insurance was so procured, continued or
11 renewed, file a written report of the same with the director
12 on forms prescribed by the director and furnished to such an
13 insured upon request. The report shall show:

- 14 (1) The name and address of the insured or insureds;
15 (2) The name and address of the insurer or insurers;
16 (3) The subject of the insurance;
17 (4) A general description of the coverage;
18 (5) The amount of premium currently charged therefor;
19 (6) Such additional pertinent information as may be
20 reasonably requested by the director.

21 2. If any such insurance covers also a subject of
22 insurance resident, located or to be performed outside this
23 state, for the purposes of this section, a proper pro rata
24 portion of the entire premium payable for all such insurance
25 shall be allocated as to the subjects of insurance resident,
26 located or to be performed in this state.

27 3. Any insurance in a surplus lines insurer procured
28 through negotiations or an application in whole or in part
29 occurring or made within or from within this state, or for
30 which premiums in whole or in part are remitted directly or
31 indirectly from within this state, shall be deemed to be

32 insurance procured or continued or renewed in this state
33 within the intent of subsection 1 of this section.

34 4. For the general support of the government of this
35 state there is levied upon the insured **or self-insurer** who
36 procures insurance pursuant to subsections 1 and 3 of this
37 section a tax at the rate of five percent of the net amount
38 of the premium in respect of risks located in this state.
39 Before April sixteenth of the year next succeeding the year
40 in which the insurance was so procured, continued or renewed,
41 the insured shall remit to the [director] **department of**
42 **revenue** the amount of the tax. The [director before June
43 first of each year shall certify and transmit to the director
44 of revenue the sums so collected] **department of revenue shall**
45 **notify the director of the sums collected from each insured**
46 **or self-insurer.**

384.057. 1. Before March second of each year, each
2 surplus lines broker shall report under oath to the director
3 on forms prescribed by him **or her** a statement showing, **with**
4 **respect to the year ending the immediately preceding December**
5 **thirty-first:**

6 (1) The gross amounts charged for surplus lines
7 insurance with respect to risks located within this state,
8 exclusive of sums collected for the payment of federal, state
9 or local taxes;

10 (2) The amount of net premiums with respect to the
11 insurance. For the purpose of this section, "net premiums"
12 means the gross amount of charges for surplus lines insurance
13 with respect to risks located within this state, exclusive of
14 sums collected for the payment of federal, state and local
15 taxes, less returned premiums.

16 2. No later than within forty-five days after the end
17 of each calendar quarter ending March thirty-first, June
18 thirtieth, and December thirty-first each surplus lines broker
19 shall report under oath to the director on forms prescribed
20 by him or her a statement showing, with respect to each
21 respective calendar quarter:

22 (1) The gross amounts charged for surplus lines
23 insurance with respect to risks located within this state,
24 exclusive of sums collected for the payment of federal,

25 state, or local taxes;

26 (2) The amount of net premiums with respect to the
27 insurance. For the purpose of this section, "net premiums"
28 means the gross amount of charges for surplus lines insurance
29 with respect to risks located within this state, exclusive of
30 sums collected for the payment of federal, state, and local
31 taxes, less returned premiums.

384.062. 1. If [the tax collectible] any tax, penalty,
2 or interest payable by a surplus lines licensee under the
3 provisions of sections 384.011 to 384.071 [has been collected
4 and] is not paid within the time prescribed, the same shall
5 be recoverable in a suit brought by the director against the
6 surplus lines licensee.

7 2. All taxes, penalties, and interest or delinquent
8 taxes levied pursuant to this chapter shall be paid to the
9 [director] department of revenue, who shall [obtain such
10 taxes, penalties and interest by civil action against the
11 insured or the surplus lines licensee, and the director shall
12 remit such taxes when collected to the director of revenue]
13 notify the director of the sums collected from each surplus
14 lines licensee. All checks and drafts remitted for the
15 payment of such taxes, penalties and interest shall be made
16 payable to the director of revenue.

17 3. Taxes collected pursuant to this chapter are taxes
18 collected by the director of revenue within the meaning of
19 section 139.031, RSMo.

[374.456. 1. The director of the department
2 of insurance, financial institutions and
3 professional registration shall personally report
4 to the appropriate committees of the general
5 assembly by March first of each year on the status
6 of all actions initiated, maintained by the
7 director, or which have been concluded, during the
8 preceding year to enforce the provisions of this
9 act. The director shall answer all questions
10 regarding such actions, or regarding other matters
11 that are related to the provisions of this act.

12 2. The report to the appropriate committees
13 of the general assembly shall cover enforcement
14 actions related to sections 354.500 to 354.636,

15 RSMo, relating to health maintenance organizations,
16 sections 374.500 to 374.515 relating to utilization
17 review agents, and sections 376.1350 to 376.1399,
18 RSMo, relating to all managed care health benefit
19 plans.]

2 [384.031. Within thirty days after the
3 placing of any surplus lines insurance, each
4 surplus lines licensee shall file with the
5 director a written report, on a form prescribed by
6 the director, which shall be kept confidential,
7 regarding the insurance with the director,
including the following:

- 8 (1) The name and address of the insured;
9 (2) The identity of the insurer or insurers;
10 (3) A description of the subject and
11 location of the risk;
12 (4) The amount of premium charged for the
13 insurance; and
14 (5) Such other pertinent information as the
15 director may reasonably require.]

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